

Message Text

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E.O. 11652: N/A
TAGS: SHUM UN CI
SUBJECT: 33RD SESSION UN HUMAN RIGHTS COMMISSION - CHILE

REF: A) SANTIAGO 0117, B) STATE 007568, C) GENEVA 0332

1. DEPARTMENT MAY WISH TO CONSIDER NOT ENTIRELY INSIGNIFICANT PROCEDURAL STEP IN CONNECTION WITH THE REVIEW OF HUMAN RIGHTS IN CHILE TO BE MADE BY THE UNHRC AD HOC WORKING GROUP AND THE HUMAN RIGHTS COMMISSION. WE REFER TO THE DESIRABILITY OF CLARIFYING CHILE'S AMBIGUOUS POSITION WITH RESPECT TO THE UN INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.

2. CHILE DEPOSITED ITS INSTRUMENT OF RATIFICATION OF THIS COVENANT ON FEBRUARY 10, 1972, FOLLOWING COMPLETION OF PROPER INTERNAL GOC PROCEDURES AS OF THAT TIME. WE UNDERSTAND THAT THE COVENANT HAS ENTERED INTO FORCE, HAVING BEEN RATIFIED BY 35 STATES. THUS, FROM THE INTERNATIONAL LEGAL STANDPOINT, CHILE WOULD SEEM TO BE BOUND BY THE TERMS OF THE COVENANT.

3. NEVERTHELESS, THE JUNTA HAS POINTED OUT THAT A 1974 DECREE LAW (D.L. 247 OF JANUARY 17, 1974) PROVIDES THAT A TREATY BECOMES BINDING IN DOMESTIC LAW ONLY AFTER THE PUBLICATION OF A SPECIFIC DECREE LAW FORMALLY RATIFYING IT. THE GOC MAINTAINS THAT THE 1974
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DECREE SUPERSEDES THE EARLIER PROCEDURES. NO SUCH DECREE WITH RESPECT TO THE COVENANT HAS APPEARED IN THE GOC OFFICIAL GAZETTE.

4. WHILE THE GOC HAS IN THE PAST RECOGNIZED ITS RATIFICATION OF THE COVENANT, THE CHILEAN SUPREME COURT RULED ON AUGUST 25, 1976 THAT SINCE THE COVENANT HAD NOT BEEN PROMULGATED AS DOMESTIC

LAW, IT WAS WITHOUT LEGAL EFFECT IN CHILE. THE ISSUE AROSE DURING THE COURT'S CONSIDERATION OF WRIT FILED ON BEHALF OF TWO PROMINENT ANTI-MARXIST CHILEAN LAWYERS (JAIME CASTILLO AND EUGENIO VELASCO) WHO IN AUGUST 1976 WERE UNCEREMONIOUSLY EXPELLED FROM CHILE UNDER THE PROVISIONS OF EMERGENCY LEGISLATION PUT INTO EFFECT BY THE CHILEAN JUNTA SHORTLY AFTER THE 1973 COUP. DEFENSE ATTORNEYS ARGUED THAT EXPULSION UNDER THE PROVISIONS OF THE EMERGENCY LAWS (ARTICLE 2 OF DECREE LAW 81) WAS ILLEGAL SINCE IT CONTRAVENED THE OVERRIDING OBLIGATIONS OF ARTICLES 12 AND 13 OF THE UN COVENANT ON FREEDOM OF MOVEMENT AND EXPULSION.

5. IN MID-JANUARY 1977 THREE PROMINENT LOCAL LAWYERS FORMALLY REQUESTED THE SUPREME COURT TO REVIEW ITS AUGUST 1976 RULING.

6. IT OCCURS TO US THAT IT MIGHT BE USEFUL TO POINT OUT TO THE CHILEANS DIRECTLY OR THROUGH A THIRD PARTY, THAT THE GOC WOULD STAND TO GAIN BY REGULARIZING ITS POSITION RESPECT TO THE COVENANT. IF WE ARE NOT MISTAKEN, EVEN THE USSR HAS FOUND IT POSSIBLE TO RATIFY THE COVENANT.

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